IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 548 OF 2007

Sandeep Atmaram Mane .... Petitioner
Vs.
Dhanvantri Nagari Sahakari .... Respondent
Pat Sanstha Ltd., Satara & Anr.

Mr. Sudatta Patil for the Petitioner.
Mr. Y.S. Shinde, APP for the Respondent

CORAM : J.H. BHATIA, J.
DATE : 25TH APRIL, 2007

P.C.

1) Heard Mr. Patil, learned Counsel for the petitioner. Perused the impugned order. This petition may be disposed of without any notice to the respondents.

2) The respondent no. 1 is original complainant in the complaint under Section 138 of Negotiable Instruments Act. The petitioner is accused in the said matter. It appears that on 1/11/2006 on behalf of respondent no. 1 an application was made seeking re-examination of the complainant's witness on the ground that certain ambiguity was created in view of the questions put

in the cross examination pertaining to the loan and statement of accounts. After hearing the parties, the learned Extra Judicial Magistrate F.C. allowed that application and directed to recall the complainant for re-examination under Section 311 Cr.P.C. Learned Counsel for the petitioner makes a statement that as per the instructions received by him, even the cross examination of the complainant's witness was not completed and there is a mistake in the order passed by the learned Magistrate.

3) In view of the provisions of Section 138 of the Indian Evidence Act, it is clear that the witness shall be first examined in chief, then if the opposite parties so desire cross examined and then if the party calling him so desires re-examined. Therefore re-examination of the witness is possible only after cross examination is over and not before. If the cross examination is not yet completed, naturally the order passed by the Magistrate allowing the complainant to re-examine its witness will take effect only after cross examination on behalf of accused is completed and not before and if the cross examination is already completed, the order passed by the Magistrate recalling the witness is correct.

4) In view of this, in case cross examination of the witness of the complainant is not yet completed, the order passed by the Magistrate granting permission to the complainant to re-examine its witness shall be effective only after cross examination is completed. With this clarification, Writ Petition stands disposed of.

(J.H. BHATIA, J.)